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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/814,465	03/21/2001	John Paquette	05923-012001	4116
23483	7590	01/13/2005	EXAMINER	
WILMER CUTLER PICKERING HALE AND DORR LLP 60 STATE STREET BOSTON, MA 02109			SAADAT, CAMERON	
			ART UNIT	PAPER NUMBER
			3713	

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/814,465

Applicant(s)

PAQUETTE ET AL.

Examiner

Cameron Saadat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 9/20/2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,5-9,11-22,24-27,30-34,36-47,49-52,55-59,61-72 and 74-77 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,5-9,11,12,26,27,30-34,36,37,51,52,55-59,61,62,76 and 77 is/are allowed.
- 6) ☒ Claim(s) 13-22, 24-25, 38-47, 49-50, 63-72, 74-75 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### DETAILED ACTION

In response to remarks filed 9/20/2004, claims 1-2,5-9,11-22,24-27,30-34,36-47,49-52,55-59,61-72 and 74-77 are pending in this application. Claims 3-4, 10, 23, 28-29, 35, 48, 53-54, 60, and 73 are cancelled.

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 13-20, 24-25, 38-45, 49-50, 63-70, and 74-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aoki (U.S. Patent No. 6,294,720) in view of Kay (USPN 6,121,533).**

This holding, incorporated herein, is maintained from the prior action for the cited claims as amended. Response to the applicant's remarks are provided below and incorporated herein.

**Claims 22, 47, and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aoki (U.S. Patent No. 6,294,720) in view of Kay (USPN 6,121,533).**

This holding, incorporated herein, is maintained from the prior action for the cited claims as amended. Response to the applicant's remarks are provided below and incorporated herein.

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Claims 21, 46, and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aoki (U.S. Patent No. 6,294,720) in view of Kay (USPN 6,121,533), further in view of Miller et al. (U.S. Patent No. 5,925,843).

This holding, incorporated herein, is maintained from the prior action for the cited claims as amended. Response to the applicant's remarks are provided below and incorporated herein.

***Allowable Subject Matter***

Independent claims 1, 26, 51 and their respective dependent claims are allowed. The following is an examiner's statement of reasons for allowance:

The prior art of record fails to teach the specific combination of elements as claimed in independent claims 1, 26, and 51. In particular the prior art fails to teach *inter alia* a method and apparatus for generating a musical part from an electronic music file comprised of pitched instrumental parts, comprising the steps of generating a control stream that indicates which of the instrumental parts has a highest value for each of a plurality of periods of time, wherein generating the control stream involves for each of the plurality of periods of time comparing a contribution of one instrumental part for that period of time to a contribution of another instrumental part for that period of time and wherein generating the control stream is based on a cost of switching between the one instrumental part and the other instrumental part. The closest prior art of record does not teach or fairly suggest this feature in the combination.

***Response to Arguments***

Applicant's arguments, (See p. 3-5), filed 9/20/2004, with respect to the feature of "generating a control stream based on a cost of switching" have been fully considered and are persuasive. The rejection of claims 1-2,5-9,11-12, 26-27,30-34,36-37, 51-52, 55-59,61-62 and 76-77 has been withdrawn.

Applicant emphasizes that Kay does not teach the feature of selectively combining multiple patterns, let alone suggest the approach of combining patterns of relatively low frequency before patterns

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of relatively high frequency. However, the examiner respectfully disagrees. Initially it is noted that Aoki discloses a method for generating a musical part from an electronic music file by identifying a plurality of patterns in the electronic music file and selectively combining the patterns to produce the musical part that provides good similarity or contrast to a given melody (see Fig. 6, refs. 110, 112, 114, 116, 118; Fig. 2). Aoki does not explicitly disclose that patterns having relatively low frequencies are combined to produce the musical part before patterns having relatively high frequencies are combined. However, Kay teaches a method of combining multiple patterns to generate a musical part (Col. 20, lines 24-45), wherein patterns having relatively low frequencies are combined to produce the musical part before patterns having relatively high frequencies are combined (Col. 18, line 63 – Col. 19, line 14). Thus, it would have been obvious to an artisan utilize Aoki's method of combining patterns to design a melody that combines low frequency patterns before high frequency patterns in order to extract and combine patterns and pitches which show similarity and/or contrast one another (See Aoki, Col. 22, lines 3-39; Col. 19, lines 29-32).

### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cameron Saadat whose telephone number is (571) 272-4443. The examiner can normally be reached on M-F 9:00 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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CS

  
XUAN M. THAI  
PRIMARY EXAMINER  
An 3713